

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

Pennsylvania Pure Distilleries, LLC
Plaintiff,

v.

Boyd Coffee Company
Defendant.

TM Reg. # 1,844,292
547,042

2,593,788

2,771,750

3,126,775

Case No. 3,218,078

COMPLAINT FOR DECLARATORY
JUDGMENT

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff, Pennsylvania Pure Distilleries, LLC ("Pennsylvania Pure Distilleries"), and for its complaint against Defendant, Boyd Coffee Company ("Boyd Coffee"), states:

PARTIES

1. Plaintiff Pennsylvania Pure Distilleries is a Pennsylvania limited liability company having its principal place of business and registered office at 1101 William Flynn Highway, Glenshaw, Pennsylvania 15116.
2. Pennsylvania Pure Distilleries sells distilled spirits, namely Vodka, using its trademark BOYD & BLAIR.
3. Defendant Boyd Coffee is an Oregon corporation with its principal place of business and mailing address at 19730 NE Sandy Blvd., Portland, Oregon 97230.

4. On information and belief, in addition to various food products including soup mixes, gravies, and sauces, Defendant has been using its trademark, BOYDS, in association with the advertising and sale of non-alcoholic beverages including coffee, tea, and cocoa primarily in the Pacific Northwest region of the United States including Oregon, Idaho, Washington, northern California, and Montana.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over this cause of action pursuant to 28 U.S.C. §§ 1331, 1338, 1367(a), 2201 (declaratory judgment), and 2202, as well as under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

FACTUAL BACKGROUND

7. According to the United States Patent and Trademark records, Defendant is the owner of the following six federal trademark registrations:

BOYDS (Reg. No. 547,042) for “coffee, tea, a preparation of cocoa, chocolate, sugar and milk for making a food beverage; food flavoring extracts and food flavoring compounds; condiments, namely onion salt, garlic salt, onion powder, and prepared mustard; steak sauce; canned soup bases; dehydrated pudding; butterscotch topping for foods; flavoring syrups for food purposes; monosodium glutamate seasoning, and cornstarch”.

BOYDS (Reg. No. 1,844,292) for “electric hot beverage brewers and serving pots primarily for commercial use; beverage cups; refreshment

delivery services; dried soup bases and dried soup mixes; coffee, tea, cocoa, and dried gravies; cider mixes.

PERCIVAL BOYD'S TEAS OF ORIGIN (Reg. No. 2,593,788) for "tea".

BOYDS COFFEE & design (Reg. No. 2,771,750) for "coffee".

BOYDS TEA & design (Reg. No. 3,126,775) for "tea".

BOYDS & design (Reg. No. 3,218,078) for "coffee cups".

8. Defendant Boyd Coffee does not sell alcoholic beverages such as vodka or other distilled spirits.
9. Boyd is a surname, and is the surname of the founder of Defendant.
10. Boyd is also a family name of one of the founders of Plaintiff.
11. Because Boyd is a surname, one or more of Defendant's Registrations above were registered only pursuant to 15 U.S.C. § 1052(f).
12. On January 9, 2008, Pennsylvania Pure Distilleries filed an application for registration of its mark BOYD & BLAIR for goods related to distilled spirits, and the mark was allowed for publication by the United States Patent and Trademark Office ("USPTO").
13. Pennsylvania Pure Distilleries filed the application for registration of its mark BOYD & BLAIR as an "intent-to-use" application because at the time the mark was not being used in commerce.
14. Provided Pennsylvania Pure Distilleries' mark BOYD & BLAIR was not opposed during the publication period and a satisfactory statement of use was subsequently filed with the USPTO, the mark would have been accepted for registration on the principal register in a classification of goods separate from any of Defendant Boyd Coffee's classifications.

15. However, by cease and desist letter dated April 25, 2008 to counsel for Pennsylvania Pure Distilleries, Defendant, upon realizing Pennsylvania Pure Distilleries had filed an application for registration of its mark, alleged that "any use of [plaintiff's] mark will infringe, and potentially dilute, Boyd's trademark rights." See exhibit 1 (redacted without attachments).

16. By subsequent letter dated May 21, 2008, Defendant Boyd Coffee asked that Pennsylvania Pure Distilleries "abandon its application to register, and its intent to use, the BOYD & BLAIR mark." See exhibit 2.

17. On June 16, 2008, Defendant Boyd Coffee filed a Notice of Opposition with the Trademark Trial and Appeal Board of the USPTO ("opposition") to oppose registration of the mark BOYD & BLAIR, alleging that "[Defendant] will be damaged by the use and registration of [Plaintiff's] mark....". See exhibit 3 (redacted without attachments).

18. During the pendency of the opposition, Defendant Boyd Coffee rejected a settlement offer by Pennsylvania Pure Distilleries.

19. On or about August 15, 2008, Pennsylvania Pure Distilleries began using the mark in commerce and selling vodka in Pennsylvania under the trademark BOYD & BLAIR.

20. Now that Pennsylvania Pure Distilleries is using the mark in commerce, the previous written demands and threats of infringement and dilution, the filing of the trademark opposition proceeding, and the rejection of a settlement offer by Plaintiff have given rise to a case of actual controversy within the jurisdiction of this Court, pursuant to 28 U.S.C. §§ 2201 *et seq.*

21. Therefore, the instant action is for a declaratory judgment that Plaintiff Pennsylvania Pure Distilleries has not, through the use of the trademark, BOYD & BLAIR, violated or infringed any intellectual property or other right of Defendant Boyd Coffee, including but not limited to any alleged trademark rights, and that Pennsylvania Pure Distilleries has not taken any

action that constitutes unfair competition, dilution, or false and/or deceptive advertising or trade practices under federal or state law.

COUNT 1

**DECLARATORY JUDGMENT THAT USE OF THE "BOYD & BLAIR" MARK
DOES NOT CONSTITUTE TRADEMARK INFRINGEMENT OR UNFAIR
COMPETITION UNDER THE FEDERAL LANHAM ACT**

22. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

23. Defendant's mark is weak and entitled to limited, unexpanded protection because of widespread third party use and because the mark is merely a surname.

24. The competing marks form separate overall commercial impressions to the relevant public.

25. The goods and services of Plaintiff and Defendant are not related in any manner or circumstance surrounding the marketing such that they are likely to be encountered by the relevant public under circumstances that will give rise to the mistaken belief that they originate from or in some way are associated with or sponsored by the same producer.

26. Accordingly, Plaintiff Pennsylvania Pure Distilleries has not violated the Lanham Act because, as above and among other reasons, Plaintiff has not, in connection with any goods or services, used in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which (A) is likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or (B) in commercial advertising or promotion, misrepresents the nature,

characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities.

27. WHEREFORE, Pennsylvania Pure Distilleries respectfully requests this Court to enter judgment declaring that Pennsylvania Pure Distilleries' use of BOYD & BLAIR, in connection with vodka, does not constitute trademark infringement of Defendant's trademarks under any section of the federal Lanham Act.

COUNT II

DECLARATORY JUDGMENT THAT USE OF THE "BOYD & BLAIR" MARK DOES NOT CONSTITUTE TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, OR FALSE AND/OR DECEPTIVE ADVERTISING OR TRADE PRACTICES UNDER ANY STATE LAW

28. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

29. Plaintiff Pennsylvania Pure Distilleries brings this action for declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202, and 1367, as to the relevant rights, liabilities, and obligations of Plaintiff Pennsylvania Pure Distilleries and Defendant Boyd Coffee with respect to any alleged violation of state trademark, unfair competition, and false and/or deceptive advertising laws.

30. Pennsylvania Pure Distilleries has not violated any state trademark, unfair competition, or false and/or deceptive advertising laws through the use of its trademark, BOYD & BLAIR, in association with the advertising and sale of its distilled spirit products.

31. WHEREFORE, Pennsylvania Pure Distilleries respectfully requests this Court to enter judgment declaring that Pennsylvania Pure Distilleries' use of BOYD & BLAIR, in connection

with the advertising and sale of its vodka, does not violate any of Defendant's rights under any state trademark, unfair competition, or false and/or deceptive advertising laws.

COUNT III

DECLARATORY JUDGMENT THAT USE OF THE "BOYD & BLAIR" MARK DOES NOT CONSTITUTE TRADEMARK DILUTION UNDER THE FEDERAL LANHAM ACT

32. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

33. Pennsylvania Pure Distilleries brings this action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, as to the relevant rights, liabilities, and obligations of Pennsylvania Pure Distilleries and Defendant Boyd Coffee with respect to the federal Lanham Act, 15 U.S.C. §§ 1051 *et. seq.*, specifically 15 U.S.C. § 1125(c).

34. There has been no substantially exclusive use of Defendant's trademarks.

35. Defendant's trademarks are not famous.

36. The degree of distinctiveness of Defendant's trademarks is extremely small, if any.

37. For the above and other reasons, Pennsylvania Pure Distilleries has not violated 15 U.S.C. § 1125(c) through the use of its trademark, BOYD & BLAIR, in association with the advertising and sale of its vodka products.

38. WHEREFORE, Pennsylvania Pure Distilleries respectfully requests this Court to enter judgment declaring that Pennsylvania Pure Distilleries' use of BOYD & BLAIR, in connection with its vodka, does not constitute trademark dilution of Defendant's trademarks under 15 U.S.C. § 1125(c) or any other section of the federal Lanham Act.

PRAYER FOR RELIEF

WHEREFORE, Pennsylvania Pure Distilleries respectfully requests this Court to enter its judgment:

1. Declaring that Plaintiff Pennsylvania Pure Distilleries' use of the trademark, BOYD & BLAIR, in association with the advertising and sale of its vodka products, does not violate the federal Lanham Act, nor infringe any of Defendant's trademarks;
2. Declaring that Plaintiff Pennsylvania Pure Distilleries' use of the trademark, BOYD & BLAIR, in association with the advertising and sale of its vodka products, does not violate any state trademark, unfair competition, or false and/or deceptive advertising laws, nor infringe any of Defendant's trademarks;
3. Declaring that Plaintiff Pennsylvania Pure Distilleries' use of the trademark, BOYD & BLAIR, in association with the advertising and sale of its vodka products does not constitute trademark dilution or violate the federal Lanham Act, specifically 15 U.S.C. § 1125(c).
4. Enjoining Defendant Boyd Coffee, its agents, servants, employees, attorneys, and affiliates, and those persons or entities in active concert or participation with them from interfering with Pennsylvania Pure Distilleries' business, or from threatening litigation or otherwise making statements that Pennsylvania Pure Distilleries has infringed or are infringing any rights of Defendant;
5. Awarding Plaintiff its costs and attorney's fees incurred in conjunction with this suit; and,
6. Awarding Plaintiff any other relief that this Court deems just and proper.

JURY TRIAL DEMANDED

Respectfully submitted,

MCKAY & ASSOCIATES, P.C.

s/Kenneth P. McKay

Kenneth P. McKay

PA ID No. 73425

s/Donald J. McKay

Donald J. McKay

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(412)344-6114 (fax)

don@mckaylaw.com

Attorneys for Plaintiff

CJS-44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <u>Pennsylvania Pure Distilleries, LLC</u>	DEFENDANTS <u>Boyd Coffee Company</u>
(b) County of Residence of First Listed <u>Allegheny</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorneys <u>Kenneth P. McKay, Donald J. McKay</u> <u>McKay & Associates, P.C., 801 McNeilly Rd., Pittsburgh, PA 15226</u> (Firm Name, Address, and Telephone Number)	<u>Attorneys Peter Heuser, Kolisch Hartwell, P.C.</u> <u>520 S.W. Yamhill St., Suite 200, Portland, OR 97204</u> Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">(For Diversity Cases Only)</th> <th>PTF</th> <th>DEF</th> <th style="text-align: left;">(Place an "X" in One Box for Plaintiff and One Box for Defendant)</th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	(For Diversity Cases Only)	PTF	DEF	(Place an "X" in One Box for Plaintiff and One Box for Defendant)	PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 829 Copyrights <input type="checkbox"/> 830 Patents <input checked="" type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Race/Color Influence and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 490 Selective Service <input type="checkbox"/> 490 Securities/Commodities/Exchange <input type="checkbox"/> 495 Customer Challenge 12 USC 3410 <input type="checkbox"/> 496 Other Statutory Actions <input type="checkbox"/> 497 Agricultural Acts <input type="checkbox"/> 498 Economic Stabilization Act <input type="checkbox"/> 499 Environmental Matters <input type="checkbox"/> 499 Energy Allocation Act <input type="checkbox"/> 499 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fed Determination Under Equal Access to Justice <input type="checkbox"/> 990 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Leases & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emp'l Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395b) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW/CMWV (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (40562) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>15 U.S.C. 1051 et seq.</u> Brief description of cause: <u>Declaratory judgment of non-infringement of trademark, no unfair competition, no trademark dilution</u>

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/> DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

VIII. RELATED CASE(S) IF ANY	JUDGE	DOCKET NUMBER
(See instructions):		

DATE	SIGNATURE OF ATTORNEY OF RECORD
<u>8/20/2008</u>	<u>D. J. McKay</u>

FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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JS 44AREVISED OCTOBER, 1993

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the ☐ Erie ☐ Johnstown ☒ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.

2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.

3. Complete if on ERIE CALENDAR: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

4. Complete if on JOHNSTOWN CALENDAR: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. ☐ This case is related to Number _____ Judge _____
2. ☒ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit.

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All prose Civil Rights actions by the same individual shall be deemed related.

PART C

1. CIVIL CATEGORY (Place x in only applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas Corpus
4. ☐ Civil Rights
5. ☒ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☐ All other federal question cases
8. ☐ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☐ Insurance indemnity, contract and other diversity cases.
10. ☐ Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

DATE 8/20/08 ATTORNEY ATTORNEY AT LAW D. J. M. B.

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

DAO 440 (Rev. 8/01) Summons in a Civil Action

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

Pennsylvania Pure Distilleries, LLC

V.

Boyd Coffee Company

SUMMONS IN A CIVIL ACTION

CASE NUMBER: _____

TO: (Name and address of Defendant)

Boyd Coffee Company
19730 NE Sandy Boulevard
Portland, OR 97230

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY

(name and address)

Donald J. McKay
801 McNeilly Road
Pittsburgh, PA 15226

an answer to the complaint which is served on you with this summons, within 20 days after service

of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

DATE

DAO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE	
Service of the Summons and complaint was made by me(1)	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service	
<input type="checkbox"/> Served personally upon the defendant. Place where served:	
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:	
<input type="checkbox"/> Returned unexecuted:	
<input type="checkbox"/> Other (specify):	

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on _____ <div style="display: flex; justify-content: space-between;"> Date Signature of Server </div> _____ Address of Server		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.